

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CLOTEAL SWOOPES,

Plaintiff,

v.

DOCTORS MEDICAL CENTER,

Defendant.

No. C 07-0101 PJH

ORDER OF DISMISSAL

Plaintiff Cloteal Swoopes filed this action on January 8, 2007, and also filed an application for leave to proceed in forma pauperis (IFP). On February 2, 2007, the court dismissed the complaint pursuant to 28 U.S.C. § 1915(e)(2) for failure to state a claim, and also for failure to allege a basis for subject matter jurisdiction. The court also denied the IFP request.

The dismissal was with leave to amend. The amended complaint was due on March 9, 2007. As of March 14, 2007, plaintiff had not filed an amended complaint. She did submit a letter dated February 9, 2007, which was filed on February 23, 2007, but the letter did nothing to clarify the basis for federal jurisdiction.

The complaint, combined with the subsequent letter, appears to state a claim for medical malpractice on behalf of plaintiff's son. The only possible basis for federal jurisdiction over a medical malpractice claim asserted against a non-federal defendant is diversity jurisdiction under 28 U.S.C. § 1332. However, because the parties all appear to

1 be residents of the State of California, complete diversity is lacking, and the court cannot
2 exercise jurisdiction.

3 In addition, as the court noted in the February 2, 2007, plaintiff has not established
4 that her son meets the requirements under Federal Rule of Civil Procedure 17(c) so that
5 she can proceed in a legal action as guardian ad litem on his behalf.

6 The court advised plaintiff in the February 2, 2007, order that failure to file an
7 amended complaint by March 9, 2007, would result in dismissal of the action. Accordingly,
8 plaintiff having failed to amend the complaint as directed, the action is hereby DISMISSED.

9 **IT IS SO ORDERED.**

10 Dated: March 16, 2007



11 _____
PHYLLIS J. HAMILTON
United States District Judge